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WEITERE INFORMATIONEN OK

Thursday, November 05, 2009

The auction and the sword

Anno Domini 193 is often called the Year of the Five Emperors after the five that ruled as *princeps* ("first citizen") in all or major parts of the Roman Empire: Pertinax, Didianus Julianus, Pescennius Niger, Clodius Albinus, and Septimus Severus. Indeed, counting the Emperor Commodus, who died at the end of 192, the Empire saw six emperors in the space of five months.

The Roman imperial succession was supposed to proceed by adoption of the most competent possible successor [3]. This followed the example of Julius Caesar's adoption of Octavian as his heir, and Octavian's subsequent taking on the title of *princeps* as Augustus Caesar. In practice, however, at least three other factors often intervened: first, emperors tended to favor their natural sons over their adopted ones; second, the Praetorian Guard, the emperor's bodyguard, often exercised a life-or-death control over the succession; and third, Roman legions were often motivated to intervene. Combining this rickety system of succession with the awful power of the autocratic emperor, whose "will was law", made successions an all-or-nothing, win-or-die struggle of often devastating violence. The Year of the Five Emperors witnessed more than its share of such violence. It gave rise to the Severan dynasty and more importantly to its legal authorities, who are cited in courts of law today, millenia after the emperors themselves have been forgotten. The Severan's jurists also voiced political ideas that would echo down to our time, as we shall see in future articles.

Commodus, the incompetent and unpopular natural son and successor of Marcus Aurelius, was poisoned by his mistress Marcia (not, I'm afraid to tell fans of *Gladiator*, slain by Russell Crowe in the Colosseum). Apparently this assassination was a plot that included the Praetorian prefect Laetus and the urban prefect Pertinax. The urban prefect was something like the mayor of the city of Rome: he supervised all the *collegia* (corporations and guilds) in the city, supervised maintenance of its aqueducts and sewers, supervised the import and doling of grain, supervised a force of police and night watchmen, and other such administrative tasks. The Praetorian prefect was the head of the emperor's bodyguard, the Praetorian Guard, which also (as here) often had the power to make or break emperors.

The Guard declared Pertinax emperor. After only three months in power, as the great historian Cassius Dio reports, the Praetorians, unsatisfied with the funds Pertinax had provided them and fearing persecution, turned against Pertinax:

> But Laetus...proceeded to put out of the way many of the soldiers, pretending that it was by the emperor's orders. The others, when they became aware of it, feared that they, too, should perish, and made a disturbance; but two hundred, bolder than their fellows, actually invaded the palace with drawn swords. Pertinax had no warning of their approach until they were already up on the hill; then his wife rushed in and informed him of what had happened. On learning this he behaved in a manner that one will call noble, or senseless, or whatever one pleases. For, even though he could in all

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> probability have killed his assailants,— as he had in the night-guard and the cavalry at hand to protect him, and as there were also many people in the palace at the time,— or might at least have concealed himself and made his escape to some place or other, by closing the gates of the palace and the other intervening doors, he nevertheless adopted neither of these courses. Instead, hoping to overawe them by his appearance and to win them over by his words, he went to meet the approaching band, which was already inside the palace; for no one of their fellow-soldiers had barred the way, and the porters and other freedmen, so far from making any door fast, had actually opened absolutely all the entrances.[1]

The soldiers dispatched Pertinax and the Praetorians then decided to make their pecuniary preferences far more clear before they chose the next emperor:

> Meanwhile Didius Julianus, at once an insatiate money-getter and a wanton spendthrift, who was always eager for revolution and hence had been exiled by Commodus to his native city of Mediolanum, now, when he heard of the death of Pertinax, hastily made his way to the camp, and, standing at the gates of the enclosure, made bids to the soldiers for the rule over the Romans. Then ensued a most disgraceful business and one unworthy of Rome. For, just as if it had been in some market or auction-room, both the City and its entire empire were auctioned off. The sellers were the ones who had slain their emperor, and the would-be buyers were Sulpicianus and Julianus, who vied to outbid each other, one from the inside, the other from the outside. They gradually raised their bids up to twenty thousand sesterces per soldier. Some of the soldiers would carry word to Julianus, "Sulpicianus offers so much; how much more do you make it?" And to Sulpicianus in turn, "Julianus promises so much; how much do you raise him?" Sulpicianus would have won the day, being inside and being prefect of the city and also the first to name the figure twenty thousand, had not Julianus raised his bid no longer by a small amount but by five thousand at one time, both shouting it in a loud voice and also indicating the amount with his fingers. So the soldiers, captivated by this excessive bid and at the same time fearing that Sulpicianus might avenge Pertinax (an idea that Julianus put into their heads), received Julianus inside and declared him emperor.[1]

But this was politics, not voluntary commerce, and the military hierarchy of the Roman legions proved to be mightier than the highest bidder. Three governors (commanding several legions each), Albinus of Britain, Severus of Pannonia (south-central Europe), and Niger of Syria, declared themselves emperor, suspended forwarding of tax revenues to Rome, and started marching on Rome to dethrone what they considered to be a corruptly selected emperor. Severus got there first:

> Severus, after winning over everything in Europe except Byzantium, was hastening against Rome. He did not venture outside the protection of arms, but having selected his six hundred most valiant men, he passed his time day and night in their midst; these did not once put off their breastplates until they were in Rome.[1]

The security precautions of the Praetorians proved to be no match for Severus' legions, and this was so obvious that the city and Praetorian rank-and-file basically rebelled against Didianus Julianus and the Praetorian leaders and turned the city and the emperorship over to Severus:

> Julianus, on learning of [Severus' approach to Rome], caused the senate to declare Severus a public enemy, and proceeded to prepare against him. In the suburbs he constructed a rampart, provided with gates, so that he might take up a position out there and fight from that base. The city during these days became nothing more nor less than a camp, in the enemy's country, as it were. Great was the turmoil on the part of the various forces that were encamped and drilling,— men, horses, and elephants,— and great, also, was the fear inspired in the rest of the population by the armed troops, because the latter hated them. Yet at times we would be overcome by laughter;he Pretorians did nothing worthy of their name and of their promise, for they had learned to live delicately; the sailors summoned from the fleet stationed at Misenum did not even know how to drill; and the elephants found their towers burdensome and would not even carry their drivers any longer, but threw them off, too. But what caused us the greatest amusement was his fortifying of the palace with latticed gates and strong doors. For, inasmuch as it seemed probable that the soldiers would never have slain Pertinax so easily if the doors had been securely locked, Julianus believed that in case of defeat he would be able to shut himself up there and survive.

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> But Severus presently reached Italy, and took possession of Ravenna without striking a blow. Moreover, the men whom Julianus kept sending against him, either to persuade him to turn back or to block his advance, were going over the Severus' side; and the Pretorians, in whom Julianus reposed most confidence, were becoming worn out by their constant toil and were becoming greatly alarmed at the report of Severus' near approach. At this juncture Julianus called us together and bade us appoint Severus to share his throne. But the soldiers, convinced by letters of Severus that if they surrendered the slayers of Pertinax and themselves kept the peace they would suffer no harm, arrested the men who had killed Pertinax, and announced this fact to Silius Messalla, who was then consul. The latter assembled us in the Athenaeum, so named from the educational activities that were carried on in it, and informed us of the soldiers' action. We thereupon sentenced Julianus to death, named Severus emperor, and bestowed divine honours on Pertinax. And so it came about that Julianus was slain as he was reclining in the palace itself; his only words were, "But what evil have I done? Whom have I killed?" He had lived sixty years, four months, and the same number of days, out of which he had reigned sixty-six days.[1]

Severus "inflicted the death penalty" on the plotters against Pertinax and "murdered" a number of Senators, after swearing a sacred oath not to harm any Senators. (The quoted language is Cassius Dio's [2] in translation). So what were Severus' homicides -- legal executions or illegal murders? This was question of legal procedure. Under the old Republican legal tradition, still nominally enforce but in practice long defunct where the emperor was concerned, most of these killings would have been considered extrajudicial, i.e. murders. As we shall see, under the laws codified under the Severan dynasty, "the emperor's will was law" -- he by definition could never murder, only execute, and his oaths were by definition not binding on his future self.

Major civil war ensued as the Severan legions went up against those of Albinus and Niger. The terrific battles included a spectacular siege of Byzantium -- later to become Constantnople, but already a mighty fortress strategically placed within on the Bosporus, controlling the maritime traffic between the Mediterranean and Black Seas. After four years of civil war between Roman legions [3], Severus came out the winner. I will examine the reign of the Severan dynasty, and in particular the effects of military structure of the victorious legions on the political structure and legal procedures of Rome, in subsequent posts.

References

[1] and [2] Cassius Dio, *Roman History*, books [1] 74 and [2] 75.

[3] Tony Honore, *Ulpian*, Oxford University Press (second edition 2002).

Posted by Nick Szabo at 10:45 PM

11 comments:

Alrenous said...

It seems the "will was law" bit was more about words than actions. Despite declaring Severus a public enemy, Julianus did not actually have the power to do so. I often wonder if these departures from the formalism might not be highly characteristic, if there are not general principles one could write down to describe them.

It also seems, from my limited knowledge, that the Empire could have profited quite a bit from disbanding the Praetorian Guard long before AD 193. Every time I read about them they're doing everything under the sun but their actual job.

4:48 PM

nazgulnarsil said...

that's probably because historians only wrote about them when they were doing something out of the ordinary.

hopefully nick's commentary on the citations will get longer as we get into the meat of policy formation.

2:14 AM

Alrenous said...

I would have thought that the Praetorians would at least be credited with stopping a coup once in a while, although yes their regular duties are not really history book material.

7:11 AM

newt0311 said...

@Alrenous

It also seems, from my limited knowledge, that the Empire could have profited quite a bit from disbanding the Praetorian Guard long before AD 193. Every time I read about them they're doing everything under the sun but their actual job.

You are making the common mistake of assigning agency where there is none. The *Empire* could do nothing. It was just a collection of people, places, and circumstances. It had no independent will. What could do something was the emperor, or (maybe) the senators acting together. However, as the Praetorian Guard was often the best organized martial element in Rome, they could in fact do whatever they wanted.

12:51 PM

nick said...

The laws regarding succession were anything but formalism in the real sense, i.e. in successions real actions departed from any rules more than they followed them (and of course, succession is the one place where even so sweeping a statement as "the emperor's will is law" breaks down -- even if we're willing to blindly obey one man, like soldiers obey their military superiors, first we have to answer the question, who is that one man?). The Severan jurists (esp. Papinian and Ulpian) were straightforward enough in support of their masters to flout Republican laws of political procedure (still nominally in force until Ulpian delivered the coup de grace with his encyclopedic digest of the laws of the Empire) but even they didn't have the balls to admit that the real law of succession in imperial Rome was "might makes right (to rule)".

1:41 PM

nick said...

The emperors were commanders-in-chief of the legions and could have, if they so wished, commanded the legions to forcibly disband the Guards and then could have chosen replacements. Some, such as Septimus Severus when he defeated Didianus Julianus, did replace them wholesale, and a much later emperor, Constantine, also fresh from winning the a civil war in which the Guard was on the other side, disbanded the Guard, replacing it with another organization.

Assassination was a common way to attack enemies or gain power; the emperors especially kept in mind the famous assassination of Julius Caesar. So having something like the Guard around was essential, as was paying them generously for their loyalty.

The Praetorian Guard was usually quite effective at guarding the emperor after the emperor was already in power, and as long as they were well-paid and not threatened by the legions (as in the cases of Septimus Severus and Constantine). But in successions the Guard often insisted on playing king-maker, supporting the candidate who made the most generous and credible promises to them (the auction above being only the most blatant example of this). The legions often got in on this power grab too, resulting in frequent civil wars. Five emperors in one year was unusual, but violent successions were common.

Guardians in modern democracies, such as the Secret Service in the U.S. don't act similarly I suppose because leaders are temporary and both they and the "legions" (armed forces) swear oaths to uphold constitutions, whereas the Guard and Legions swore oaths to be loyal to an emperor (oaths not respected or reliably enforced once the emperor was dead). Also, the will of the mob has a thuggish power far exceeding that of any daring individual, and democracy has a religious aspect whereby assassination is considered much more of a sacrilege than it was in Rome, where assassinations of unpopular emperors such as Commodus were widely celebrated. Also, leaders in modern democracies besides being temporary also otherwise have much less power than emperors whose will was law, so that there is much less to gain by killing them. We do still have the occasional assassination, but generally because the top alpha male is the lightning rods of modern society and focuses the ire of many, including of some nutjobs, rather than because assassinations are still important ways to gain power -- they no longer are.

2:13 PM

Alrenous said...

It sure looks like that, doesn't it, newt?

What I'm trying to say is the following. You'll see I have to be awfully pedantic to make the distinction in print, which is why I don't.

The collection of actors denoted by 'the Empire' would see a net increase in average wealth if the action 'disband Praetorian Guard' was taken.

Especially if we can accept that, as flawed as the social structure denoted by 'the Empire' was, it sure beat barbarism, and so the actors denoted by 'the Empire' would generally benefit from greater longevity and stability of the social 'Empire.'

nick,

I see. So perhaps it would have been better to simply make the Praetorians official king-makers and try to leverage legitimacy against the might of the legions. It sounds lame saying it straight out like that...but using in the opposite direction clearly worked in AD 193.

Hmm, I'm clearly almost mesmerized by this problem.

It is pretty impressive that we generally don't do succession-by-murder anymore. I wonder if that success can be replicated under radically different assumptions.

Amusingly, you came up with all the reasons I came up with for this, (mainly legitimacy and risk/reward) although I hadn't thought about the religion as vaccine angle before. Now I'm going to get to look for it in medieval religion as well.

8:22 PM

nick said...

Alrenous, I doubt the objection applies in your case but I've seen many supposedly knowledgeable historians and political scientists ask primarily "what should the country have done" kind of questions, which are useless except as a starting point for analysis. Even your sentence rewritten for newt is of limited usefulness until we dig down to subunits and individuals and ask why would each of them have wanted to disband the Guards, and if so how could they have done it. Very complex questions, I know, but necessary for

reasoning about history, and why we should, where possible, rely on tradition rather than our own reason for answers to social questions.

(That still leaves plenty for our reason to do, reason about traditions).

On your reply to me, I'm not sure how to "make" a new institution automatically legitimate in the Roman context. Sacred tradition said that traditional republican institutions like the Senate were the source of legitimacy. And the emperors went to great efforts to have themselves deified (ending in the compromise that deceased good emperors were deified). In the modern context, we have written constitutions combined with oaths and mass media and public school propaganda to provide legitimacy. (Indeed, with the breakdown of central-source mass media we may see a breakdown of legitimacy of institutions that were only deemed legitimate because mass media acted as if they were).

BTW, in the comments for the post previous to this I'm soliciting feedback and commentary about what folks would or would not like me to blog about over the next two years. I'm thinking of scaling back my blogging considerably if there's a lack of interest, but of writing more in areas where there's interest. Thanks in advance.

12:24 PM

nick said...

Another "whole/part" issue is treating the Praetorian Guard as a whole. In fact like other military institutions it had a commander, the Praetorian Prefect, whose orders other Praetorians had to obey. Unless they did something to violate this standard, the Prefect would just make himself emperor, and then we're back to the problem of how is the Prefect chosen, etc. (turtles standing on turtles ad infinitum).

This problem can be broken by saying that there is at least one specific civilian situations in which you do _not_ follow your superior's orders -- for example, when a secret ballot is taken among the Praetorian Guards to choose a new emperor. But even in that case, I suspect they are likely to choose the commander they are accustomed to following.

Veering away from succession to other legal procedures, the English derived their legal system from the system of military orders. The system started from military conquest but the subsequent civilian administration soon evolved in a very interesting direction. They developed a system of civilian judicial orders from the king that _had to be in a very specific form_ -- much like a computer program cannot have a syntax error. They had to be orders about a very particular subject, a particular person, and so on, and the purpose of the syntax was to make sure the superior officer stayed within these bounds. Because if these orders, called _writs_, contained an error, they _did not have to be followed_.

Thus, for example, _habeus corpus_ was a writ, an order from a king's judge in the name of the king, to bring a specific prisoner in front of the court and show just cause why he must be released. It had to be in a specific form, naming a specific prisoner, otherwise the sheriff could ignore it.

With this system the judge or king in his civilian role can issue certain important orders to his subjects, e.g. other officers or other holders of political property rights, but can't order the them to do just anything like the king could order his inferiors when at war.

IMHO, the writ system was the single most important innovation in the history of law. The writ system was a deep and powerful system, an ancestor of the U.S. system of enumerated powers, but far less subject to expansive interpretation as U.S. courts have done with the Commerce Clause and so on.

1:11 PM

Alrenous said...

The following is generally not a question because it's time for more information; you're probably going to answer them by accident.

On your reply to me, I'm not sure how to "make" a new institution automatically legitimate in the Roman context.

I see, that pretty much does it then.

But let me address digging down to individual actors:

My hypothesis is that if we inject a deity into Roman legal history, (let's assume Jupiter was a real entity) and further assume that they like Romans and want them to be happy, the deity could serve this goal by decreeing that the Praetorian guard had the mandate to select emperors, resulting in faster, cheaper succession with fewer dead people. (Jupiter is ignoring alternatives at the moment, such as ruling directly.) Obviously, no equivalent temporal authority existed, but perhaps it would be better if it had. Or perhaps the Praetorians would have simply been challenged by the legions anyway, resulting in the same amount of dead people but more bitter arguments.

(I'm not sure if I'm understanding the *reason about traditions* bit. Let me know.)

Unless they did something to violate this standard, the Prefect would just make himself emperor, and then we're back to the problem of how is the Prefect chosen, etc.

If it is possible to institute the rule that entering the Praetorians disbars you from the Emperor post, then you could do that. If not, it's a bad idea anyway, and I get closer to the conclusion that the Roman's insane succession realities are simply inherent to their system, and if they start showing up in *your* system, you're basically screwed because it requires a fundamental rewrite to fix.

I'm not sure why I didn't just ask this in the first place: are their insane successions patchable, (did they just make a wrong turn at Albuquerque, and need to correct) or were they just SOL? (They're trying to settle the moon without space flight.)

I still think I should hold off on actually asking that, though.

IMHO, the writ system was the single most important innovation in the history of law.

Following up on my own comments about how I like legal history:

Yes. And note that the writ system IS patchable; if you find that it's not restricting authority properly, you simply rejigger the writ syntax a bit.

Although, since we're talking about digging deeper to individuals...

Sheriff gets a writ with a syntax error.
Sheriff's Left brain: "I don't have to follow this writ."
Right brain: "The king will be very angry with you if you don't follow this writ."
Left brain: "But it's a bad writ, and a bad idea."
Right brain: "You don't actually feel that's important right now."
Left brain. "Ah. Well then."

_
In short I don't see how it can be boring and history at the same time. If it's boring, (names with associated dates) it must not be real history.

3:29 PM

nick said...

Good comments. A few rejoinders:

> Jupiter

Not what I meant by "individual", but I love the parallel between imaginary gods and imaginary godlike points-of-view such as "what if the Empire did X." :-) Still, as newt says, "assigns agency where there is none." Sorry to beat a dead horse, but the parallel is fun.

Perhaps more realistic is to envision the legions and the Guard, or some other sets of entities competing to get priests to have deities endorse their legitimacy. I know emperors starting with Augustus got priests to deify their (often adoptive) fathers, thereby styling themselves "Son of God", but I'll see if I can find some examples of that kind of theolegitimization besides emperors themselves.

> (I'm not sure if I'm understanding
> the reason about traditions bit.
> Let me know).

http://szabo.best.vwh.net/hermeneutics.html

> are their insane
> successions patchable

Most Western European political institutions from that day to the 20th century have been attempts to patch it, eventually accumulating enough patches that it sometimes worked for a while. Hopefully some of this I'll be blogging about. Thus I'll hold off on answering this question which you are holding off asking. :-)

(quote)
Sheriff gets a writ with a syntax error.
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Left brain: "But it's a bad writ, and a bad idea."
Right brain: "You don't actually feel that's important right now."
Left brain. "Ah. Well then."
(end quote)

That's a great example. Here are some answers off the top of my head:

(1) Usually with a writ we are talking about a command from one king's officer to another, often in the king's name, but the king himself is usually above the fray. Of course it's very useful to ask what happens when the king very much wants a particular legally dubious outcome.

(2) The sheriff has to figure out whether the king's court will agree with him that it's a syntax error, because it's that court that decides. So, taking your concern a step further, we can ask to what extent the judiciary is independent of coercion from the king. The long answer is complicated, but mostly they were, because like today's U.S. Supreme Court they served for life and firing them was highly unusual, it would be a sign of weakness and lawlessness for the king to fire a justice without very good cause (and after the Restoration, I'm remembering correctly, it additionally required impeachment by Commons and Lords).

(3) There were competing courts, with different but often practically overlapping jurisdictions. For example the king had Chancery (equity), King's Bench, and Common Pleas (the latter two common law) courts. So they could sometimes be played against each other to get a fairer deal.

4:37 PM

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